IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 7264 of 2002

Between:

Kelangi Indira Kumari, W/o. Joseph Ravi Kumar.
SKRBR Degree College, Narasaraopet.

..... PETITIONER

AND

1 The Principal Secretary,
Higher Education, Hyderabad.
2 The Commissioner of Collegiate Education,
Nampally, Hyderabad.
3 The Regional Joint Director of Higher Education,
Hyderabad.
4 The Secretary and Correspondent,
SKRBR College, Narasaraopet, Guntur.
5 K.S. Kavitha D/o. Asaiah
SKRBR College, Narasaraopet,Guntur.
(R-5 is impleaded as per court order dated 15-6-2004

in WPMP 3834 of 2004)
6 T.J. Chandrasekhara Babu S/o. Charles,
SKRBR College, Narasaraopet, Guntur.
(R-6 is impleaded as per court order dated 28-12-2004

in WPMP 29671 of 2004)

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ one in the nature of Writ of Certiorari calling for all the connected records including the impugned proceedings of the 2nd respondent in RC.No.332/Admn.VI-

2/2000 dated 07/04/2000 and quash the same as illegal, improper, unjust arbitrary and contrary to rules and further declare the action of the fourth respondent in not allowing the petitioner to work as Lecturer in Political Science as illegal, improper, unjust, against the principles of natural justice and contrary to Section 79 and 83 of the Education Act and further declare that the petitioners is entitled for absorption as lecturer in Political Science in the fourth respondent college with all consequential benefits.

Counsel for the Petitioner: MR.K.G.KRISHNA MURTHY

Counsel for the Respondents 1 to 3: G.P. FOR HIGHER EDUCATION

Counsel for the Respondent No.4: Mr.O.Manohar Reddy

Counsel for the Respondent No.5: Mr.Kasa Jagan Mohan Reddy

Counsel for the Respondent No.6: Mr.M. Ratna Reddy

The Court made the following

ORDER:

The writ petition is filed seeking a Certiorari calling for all the connected records including the impugned proceedings of the second respondent-Commissioner of Collegiate Education, Hyderabad, in Rc.No.332/Admn.VI-2/2000 dated 07-04-2000 and to quash the same as illegal, arbitrary and contrary to Rules and further to declare the action of the fourth respondent- S.K.R.B.R. College, Narasaraopet, Guntur district, in not allowing the petitioner to work as Lecturer in Political Science as illegal and contrary to the provisions of Sections 79 and 83 of the A.P. Education Act (for short 'the Act') and further to declare that the petitioner is entitled for absorption as Lecturer in Political Science in the fourth respondent-college with all consequential benefits.

The brief facts of the case that are necessary for disposal of the writ petition are as follows:

The petitioner was appointed as substitute lecturer under Faculty Improvement Programme (FIP) in politics, on
06-08-1988, in S.K.R.B.R. Degree College, Narasaraopet, Guntur district, on consolidated pay, through a properly constituted selection committee in place of Sri Y.Appi Reddy, lecturer in political science, who went on leave to prosecute M.Phil under FIP. Thereafter, her post was again converted as unaided lecturer with effect from 26-06-1990 and she continued as unaided lecturer in political science upto the year 2001.
The fourth respondent-College recommended her case for absorption, to the second respondent as the conditions of G.O.Ms.No.302, dated 23-08-1991 were fulfilled. While the matter is pending before the second respondent, the fourth respondent issued a notification dated 17-06-2001 inviting applications for aided lecturers reserved for Scheduled Caste candidates and as such the petitioner approached this Court by filing W.P.No.15504 of 2001 challenging the action of the fourth respondent in not absorbing her as lecturer in political science in aided vacancy caused due to voluntary retirement of
Sri M. Kabbi Reddy, Head of the Department of Political Science on 15-01-1998, as

illegal and an interim stay was granted by this Court on 21-07-2001. Later, the fourth respondent filed vacate stay petition along with counter affidavit stating that second respondent rejected the said proposal of the petitioner in his proceedings Rc.No.332/Admn./vi-2/2000, dated 07-04-2000, which is impugned in the present writ petition. Thereafter, the said W.P.No.15504 of 2001 was dismissed as withdrawn giving liberty to the petitioner to challenge the rejection order of the second respondent. Hence, the petitioner filed the present writ petition challenging the impugned proceedings dated
07-04-2000 of the second respondent in rejecting her case for absorption.

The grievance of the petitioner is that even though the fourth respondent has already recommended her case for absorption stating that there is workload and the vacancy is also in existence and she fulfilled the conditions of the relevant Government Orders, the second respondent rejected her case. There are several cases where the Government considered the individual cases on the proposals submitted by the respondents 2 to 4. It is her further grievance that she was appointed in the year 1988 by a duly constituted selection committee and since she filed W.P.No.15504 of 2001 the respondents asked her not to attend the college and orally terminated her services.
The Management of the fourth respondent-college without following the procedure contemplated either under section 79 or under section 83 of the Act terminated the petitioner.

A detailed counter affidavit has been filed on behalf of the fourth respondent-College stating that there are two aided lecturer posts in the college and two lecturers were working in the said posts. One lecturer working in the aided post, Sri Appi Reddy was selected under FIP to prosecute M.Phil in Nagarjuna University for a period of one year. During this period the petitioner was appointed on purely temporary basis to handle the workload in political science and her appointment was not made by a duly constituted selection committee. The said Appi Reddy has completed his programme and joined the duty and therefore, the services of the petitioner who was appointed on temporary basis came to an end automatically in the year 1989. The Management of the College has again notified the unaided lecturer post in political science, which was newly started during the year 1989-90 and in the said post the petitioner was appointed afresh with effect from 26-06-1990.
On representation of the petitioner to consider her case for absorption in the vacant

post of aided lecturer caused due to voluntary retirement of Sri M. Kabbi Reddy, the Management of the college addressed a letter to the second respondent recommending her case for absorption. Later, the second respondent through impugned proceedings dated 07-04-2000 has rejected the request of the fourth respondent for absorption of the petitioner from unaided to aided post as feasible, for the reason that there is no sufficient workload in the department. After the impugned proceedings was informed to the petitioner, she has voluntarily abonded the services and was no longer working in the college for the past more than one year. Subsequently, the second respondent has issued proceedings dated 05-08-2000 issuing certain guidelines with regard to distribution of workload, and in view of the said guidelines, the workload has increased in the college and this necessitated the management to fill up the vacancy of aided lecturer post.

The said post of lecturer in politics is reserved for scheduled castes and in view of said instructions, the fourth respondent-college has notified the said vacancy.

The learned counsel appearing for the petitioner contends that the petitioner was appointed as substitute lecturer under FIP in politics, on 06-08-1988, in S.K.R.B.R. Degree College, Narasaraopet, Guntur district, on consolidated pay, through a properly constituted selection committee in place of Sri Y.Appi Reddy and she continued as such, upto June 1990, and that the Management of the fourth respondent-college recommended her case for absorption through its proceedings dated 10-01-2000, but the second respondent, through the impugned proceedings dated 07-04-2000, rejected the case of the petitioner for absorption, and the same is arbitrary. The learned counsel further contends that the petitioner is entitled to be absorbed, as per G.O.Ms.No.328, dated 15-10-1997, which supersedes G.O.Ms.No.302, dated 23-08-1991. The leaned counsel further contends that the Government is the competent authority for absorption and there is sufficient workload in the college and in the year 1988 there were no statutory Rules so as to take permission from the competent authority, therefore, the termination of the petitioner is contrary to the provisions of Sections 79 and 83 of the Act and hence, prayed to allow the writ petition.

On the other hand, the Government Pleader for Higher Education, appearing for respondents 1 to 3, contends that the petitioner was not appointed by a duly constituted selection committee, and she was appointed as lecturer in Political Science under FIP, on pre-arrangement basis, in the vacancy caused due to the

leave of Sri Y. Appi Reddy, lecturer, and as the petitioner was appointed without prior sanction as per G.O.Ms.No.905, there are no grounds to interfere with the impugned proceedings.

The learned counsel appearing for the 4th respondent-College contends that certain conditions in G.O.Ms.No.328 have not been complied with by the petitioner and therefore, she cannot be regularized, and that the Management is following the rule of reservation and the present post is reserved for Scheduled Castes for women. He further submits that the petitioner was never appointed as lecturer in aided post in the year 1988, and the provisions of sections 79 and 83 of the Act are not applicable to her since she herself discontinued from attending the college, that whether the services of the petitioner were terminated by the Management, or whether the petitioner discontinued herself from attending the college, is a question of fact, and for the same, an appeal is provided under the Act, and therefore, he prays to dismiss the writ petition.

The learned counsel for the fifth respondent, who was impleaded subsequently, contends that the fifth respondent was selected as lecturer in political science by a duly constituted selection committee on 29-05-2002 and she joined duty on 17-06-2002 and she is working as per G.O.Ms.No.302 and since the petitioner was not appointed by a duly constituted selection committee, her services cannot be regularized.

The learned counsel appearing for sixth respondent, who was also impleaded, contends that in view of the guidelines of the Supreme Court in **E.V.Chinnaiah v. State of Andhra Pradesh**, there is no categorization of A B C D and the post has to be notified for scheduled castes, and therefore the writ petition has to be dismissed by calling a fresh notification for filling up the post of lecturer reserved for scheduled castes.

The specific case of the petitioner is that she was selected and appointed as part time lecturer on 06-08-1988 in the fourth respondent-College, through a duly constituted selection committee, in place of Y.Appi Reddy, who went on leave to prosecute M.Phil under FIP. It is her further case that her post was again converted as unaided lecturer with effect from 26-06-1990.

On the other hand, the specific case of the 4th respondent is that Sri Appi Reddy was selected under FIP to prosecute M.Phil in Nagarjuna University for a period of one year. The petitioner was appointed on purely temporary basis on account of leave of Sri Appi Reddy, to handle the workload in political science, and further she was not appointed by a duly constituted selection committee. It is also specifically stated that Sri Appi Reddy has completed his programme and joined the duty and therefore, the services of the petitioner who was appointed on temporary basis came to an end automatically in the year 1989.

The Management again notified the unaided lecturer post in political science, which was newly started during the year

1989-90 and in the said post the petitioner was appointed afresh, with effect from 16-06-1990.

The fourth respondent has not controverted the contentions of the reply affidavit filed by the petitioner, except stating that the allegation that she was appointed on purely temporary basis to handle the workload in political science and her appointment was not made by a duly constituted selection committee is incorrect.

Since the fourth respondent, who is the appointing authority, denied the case of the petitioner that she was appointed on 06-08-1988, by a duly constituted selection committee, having pleaded the same in the writ petition, the petitioner has to establish the same. No further proceedings have been placed before this Court to show that the petitioner was selected by a duly constituted selection committee.

Even the petitioner did not file her appointment order showing the terms and conditions and the nature of appointment.

For regularization of services of the part time lecturers and part time junior lecturers working in the private aided degree/private aided junior colleges, the Government issued G.O.Ms.No.328 Education (CE.III) Department, dated

15-10-1997. One of the conditions required in the said G.O. is that only those who have put in service of 3 academic years as on 30-07-1991 or 5 academic years as on 25-11-1993, as the case may be, and also continuing in service on the date of issue of these orders, are eligible for regularization.

The specific case of the respondents that in pursuance of notification for filling up of the post of unaided lecturer in political science, on purely temporarily basis, which

was newly started during the year 1989-1990, the petitioner was appointed afresh with effect from 26-06-1990. When the petitioner has not put up service of 3 academic years in the aided college, as on 30-07-1991 or 5 academic years as on 25-11-1993, her services cannot be regularized in pursuance of the G.O.Ms.No.328.

The claim of the petitioner is only based on G.O.Ms.No.328, dated 15-10-1997. This G.O. clearly indicates that Government have carefully examined the issue and considered it necessary to issue orders for the purpose of regularization of part time lecturers and part time junior lecturers working in private aided degree/private aided junior colleges. So obviously this clause has to apply only to the part time lecturers working in private aided degree/private aided junior colleges.

Though the petitioner was selected in pursuance of the notification, she was appointed in the post of unaided lecturer and one of the conditions in this G.O. is that regularization of part time lecturers and part time junior lecturers will therefore be considered only when there exists second vacant aided post in the particular subject in general, and as per the workload after adjustment of surplus lecturers. When the appointment of the petitioner was not made against the vacant aided lecturer post in political science, the G.O.Ms.No.328 relied on by the petitioner cannot be made applicable to her. It is also contended that when the petitioner was appointed on consolidated pay she requested the Management to consider her case for absorption in the vacant post of aided lecturer caused due to voluntary retirement of Sri M. Kabbi Reddy. Thereupon, the Management addressed a letter to the second respondent recommending her case for absorption. The second respondent through proceedings dated 07-04-2000, rejected the request of fourth respondent for absorption of the petitioner from unaided to aided post as not feasible, for the reason that there is no sufficient workload in the department. It is also observed in the said letter that the petitioner was appointed by the Governing Body of the college, which is against the Rules. When the said order was brought to the notice of the petitioner, the petitioner voluntarily abonded the services and she was no longer in service in the college for the past more than one year. When the Management issued a notification, the present writ petition is filed and in pursuance of constitution of the selection committee, the fifth respondent was appointed as lecturer.

Even assuming for a moment that G.O.Ms.No.328 applies to the case of the petitioner, still certain conditions have not been fulfilled by her and she was appointed in the leave vacancy in the year 1989 in the first instance, and later her

services were terminated, when the incumbent joined duty. Thereafter, she was given a fresh appointment order with effect from
26-06-1990. Even the appointment order dated 20-06-1990 is not filed before this Court to show whether she rendered service in 1989, or it is a fresh appointment. If it is a fresh appointment, the date of her service with effect from
26-06-1990 has to be taken into consideration for the purpose of regularization. If that is taken into consideration she has not fulfilled the conditions required under G.O.Ms.No.328 and therefore, the petitioner is not entitled for regularization of the services.

The other contention raised by the learned counsel for the petitioner is that without following the procedure contemplated either under Section 79 or 83 of the Act, the oral termination has been ordered. For that purpose, the learned counsel for the petitioner placed strong reliance in **Vasavi College of Engineering v. A. Suryanarayana** wherein the Division Bench of this Court held that:

> "In the view which we have taken that Sections 79 and 83 supplement each other, and between them exhaust all terminations of service-penal or otherwise and that those provisions apply equally to regular as also temporary, non-regular employees, it is not necessary for us to consider the other aspects of this question. We hold this view in view of the fact that in either case where the termination penal or non-penal, it is obligatory to obtain prior approval of competent or higher authority, as a condition precedent for any such action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act. That seems to be the proper understanding of the salutary provisions which are ameliorative in character. If we are to understand Sections 79 and 83 to apply only to some categories and not to cover the entire gamut of terminations of services of employees of educational institutions, that will leave a grey area where the whims and fancies of the management will rule the roost. Such an interpretation frustrates the very purpose of the enactment."

He also relied on a decision in **T. Nagaraju v. District Collector, W.G.**, which has no application in view of the fact that the petitioners therein have completed five years service and are in service of the respondents therein and therefore the respondent-University has to apply the provisions of G.O.Ms.No.212.
He also relied on a decision of this Court in **Govt. of AP v. P.Thirumala Devi** wherein it is held that the Government cannot direct the institutions to implement the reservation policy. It is not a case of the Government directing the Management to

implement the reservation, but it is the Management who is implementing the rule of reservation by maintaining the castes. Therefore, this decision also not applicable to the case of the petitioner.

The impugned order shows that absorption of the petitioner was not feasible of compliance for the reason that there is no sufficient workload in the department and the Management by its letter dated 10-01-2000, addressed to the Commissioner & Director of Collegiate Education, Hyderabad, giving workload statement in the department of political science. Therefore, in view of the request made by the Management giving the details of workload, it cannot be said that there is no sufficient workload is one of the factors to be taken into consideration for regularization of the services.

The learned counsel for the petitioner also brought to notice several instances where the Government permitted the regularization of part time lecturers. Those are cases where the posts held by them were admitted into grant-in-aid. Therefore those cases cannot be said to be the cases similarly situated with that of the petitioner.

The specific case of the petitioner is that she was discontinued from service, whereas the fourth respondent specifically stated that after passing of the impugned order and when it was brought to the notice of petitioner, the petitioner has voluntarily abandoned the services and she was no longer working in the college for the past more than one year. Therefore, if it is a case of voluntary abandonment, the compliance of Sections 79 or 83 of the Act does not arise. Therefore, it is a disputed question of fact, which cannot be decided and determined by this Court while exercising the powers under judicial review. Since the impugned proceedings do not suffer from any infirmities so as to call for the interference of this Court and since the petitioner has not fulfilled certain conditions in G.O.Ms.No.328, she is not entitled for absorption or regularization. Therefore, there are absolutely no merits in the writ petition.

The Management issued a notification to fill up the post of aided lecturer in political science, which is reserved for scheduled caste 'B'. At that time there was a categorization of scheduled castes. But by virtue of decision rendered in **E.V.Chinnaiah**'s case (first supra) wherein the apex Court held that such categorization would tantamount to discrimination in reverse and would attract the

rule of Article 14 of the Constitution. In pursuance of said notification, the selection Committee appointed one K.Siri Kavitha, fifth respondent herein, as lecturer in political science. The said judgment of apex Court was rendered on 05-11-2004, long after appointment of fifth respondent herein. Though the appointment order of the fifth respondent is subject to further orders, as on the date of her appointment as lecturer there was a categorization among the scheduled caste candidates and therefore, the appointment of fifth respondent cannot be said to be illegal and the judgment rendered by the apex Court would be made applicable to the appointment made in the year 2002.

The claim of the fourth respondent is that she is eligible for the post of lecturer in political science and in view of judgment of the Supreme Court, the post of lecturer in political science has to be filled up by scheduled caste candidate, without categorization. The contention of the learned counsel for the fourth respondent cannot be accepted in view of the fact that the appointment of fifth respondent was made long prior to the judgment stated by the apex Court.

For the reasons stated above, the writ petition is devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

K.C. BHANU, J

Date: 19th July, 2005

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ASSISTANT REGISTRAR
To

1 The Principal Secretary,
Higher Education, Hyderabad.
2 The Commissioner of Collegiate Education,
Nampally, Hyderabad.
3 The Regional Joint Director of Higher Education,
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